

### **REMARKS**

Accordingly, claims 1, 3-4, 6-17, 21-22, 24-30, 34-45, and 63-98 were pending in the subject application. Claims 1, 3, 37, 39, 41-44, 66, 68-71, 73-75, 77-78, 82-83, 86-88, 90-92, 95 and 97 are amended. Accordingly, claims 1, 3-4, 6-17, 21-22, 24-30, 34-45, and 63-98 are pending in the subject application.

No new matter was added. None of the amendments is being introduced for reasons relating to patentability.

### **Section 112, Second Paragraph Rejections**

The Examiner rejected claims 1, 3, 37, 39, 41-44, 66, 68-71, 73, 75, 77-78, 82, 86-88, 90-92, 95 and 97 as indefinite, asserting that the phrase "and pharmaceutically acceptable esters of the compounds of formula I" is ambiguous. The Examiner also objected to claim 93 as being based on a rejected claim.

The Examiner contended that it was unclear whether Applicants intended to claim a single compound, or a mixture or composition of at least two compounds. Applicants submit that it is perfectly clear from the context that Applicants are claiming in the alternative: a compound with the specified structure defined in the claim or a pharmaceutically acceptable salt of such a compound or a pharmaceutically acceptable ester of such a compound.

Nevertheless, although Applicants believe that the original claim language was unambiguous, Applicants have amended the rejected claims to clarify that the claims cover the specified compound(s), a pharmaceutically acceptable salt of the specified compound(s) or a pharmaceutically acceptable ester of the specified compound(s). Applicants have also similarly amended claims 74 and 83 although the Examiner did not

reject these claims, as these claims contain claim language similar to the language objected to by the Examiner.

The Examiner also rejected claim 1, stating that there was insufficient antecedent basis for the limitation "V is O or S." Applicants have deleted the clause containing this limitation in both claims 1 and 37.

In view of the amendments, the grounds for the Examiner's rejections have been obviated. Applicants submit that the pending claims are in condition for allowance.

### **Non-Statutory Double Patenting**

The Examiner provisionally rejected claims 1, 3-4, 6-17, 21-22, 24-30, 34-45, 63-92, and 94-98 under the doctrine of obviousness-type double patenting as unpatentable over claims 1, 2, and 7-22 of co-pending U.S. application no. 10/310,559, which was filed December 5, 2002, and published as 2003/0186984 A1. Applicants submit that the double-patenting rejection is improper as the claims of each application are patentably distinct over the claims of the other application.

However, it is not necessary to decide the merits of the obviousness inquiry because the PTO's established procedures require that the provisional rejection be withdrawn. MPEP 804 provides, in relevant part:

If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

If the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The

examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

In the present case, the only remaining rejection is the provisional double patenting rejection. Moreover, the present application (filed on August 9, 2001) is the earlier filed application as compared to co-pending U.S. application no. 10/310,559, which was filed December 5, 2002. Accordingly, Applicants respectfully request that the Examiner withdraw the provisional double-patenting rejection.

Applicants direct the Examiner's attention to the Supplemental IDS submitted concurrently or shortly after the filing of the instant Amendment.

If the Examiner believes that an interview would assist in furthering prosecution of the subject application, please contact the undersigned at the number below to schedule an interview at the Examiner's earliest convenience.

No further fee is required in connection the filing of this Amendment. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee to Deposit Account No. 08-2525.

Respectfully submitted,



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